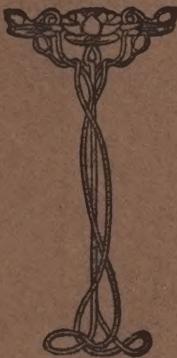


HE
395
033
1910

LIBRARY
OHIO STATE UNIVERSITY

159254

Report of
The Legislative
Canal
Commission



REPORT

OF

THE LEGISLATIVE CANAL
COMMISSION

MEMBERS:

W.M. A. WEYGANDT, *Chairman.*

JAS. R. CLARK, *Secretary.*

E. J. HOPPLE.

JACOB J. WISE.

CULBERTSON J. SMITH.

GUY DETRICK.



COLUMBUS, OHIO:
THE F. J. HEER PRINTING CO.
1914.

INDEX.

	Page
Introduction	5
Extent and Description.....	6
Physical Condition	7
Ohio and Erie.....	7
Miami and Erie.....	8
Receipts and Expenditures.....	8
Disposal of Property.....	9
Present Use of Canal.....	10
Increase of Income.....	10
Federal Rights in Canals.....	11
Rights of Disposal.....	13
Right of Abandonment.....	14
Rights of Abutting Property Owners.....	16
Recommendations (12)	16
Summary	21
Exhibit "A"	23

REPORT OF THE LEGISLATIVE CANAL COMMISSION.

To the HONORABLE JAMES M. Cox, *Governor of Ohio*:

The Joint Legislative Commission, created pursuant to Senate Joint Resolution No. 32, providing for an investigation of the Ohio canals for the purpose of recommending a policy for the future use of said canals, herewith submits the following report:

The Joint Legislative Commission, at the call of its duly appointed chairman, Wm. A. Weygandt, after holding several preliminary meetings at Columbus, met at Cleveland, Ohio, and began its work under said resolution by holding a public meeting at the City Hall. At this meeting a policy for the future use and disposition of the canals was discussed. Afterwards, on the same day, the Commission spent some time in inspecting the Ohio and Erie Canal in Cleveland and vicinity, and on the following morning, August 12th, resumed its work by inspecting the canal from Cleveland to Akron, and on the evening of that day held a public meeting with the citizens of Akron. The Commission each day thereafter, as it moved from place to place, carefully inspected the canal, observing its condition as affected by the recent floods, as well as its use as a factor in the transportation of freight products. The Commission further made careful inquiry at all points concerning the extent of the state's rights in all leases with the users of the water of the canal, as well as leases pertaining to state lands.

The primary object in viewing the canal property was to determine the revenue accruing to the state at the present time under its leases and to learn public sentiment with reference to a future policy for the canals. The Commission endeavored to ascertain the probable volume of freight for transportation as well as what increase in revenue might be expected from the users of the water and other state property.

A daily schedule or itinerary had been prepared for the use of the Commission by Superintendent of Public Works, John I. Miller, and at every place therein designated for the holding of a public meeting, and at many places not therein specified, meetings were held. Every public meeting was well attended and the canal question in all of its phases freely discussed, both for and against the retention of the canal property by the state, as well as the uses to which it might be put. A wide diversity of opinion was expressed. A strong sentiment for a barge canal was found in the western part of the state along the Miami and Erie Division, while only a few were favorable to the same proposition along the Ohio and Erie Division.

The Commission continued on its tour over the two divisions of the system from the 11th day of August until the 31st day of August, 1913, at which time the work of inspection was completed at Toledo.

At all hearings the Commission was informed that the canal in its present condition is useless as a means of transportation and much objection was found in various places to stagnant water in the canal. While some favored abandonment of the canal for transportation, comparatively few favored the state's disposing of the right-of-way.

Valuable assistance and information were given the Commission by the Superintendent of Public Works, John I. Miller, and the Commission, in framing its report, acknowledges its appreciation of the same. Many other persons furnished the Commission valuable facts and suggestions, for which appreciation is hereby expressed.

EXTENT AND DESCRIPTION.

The canal system of Ohio at present consists of the Ohio and Erie and the Miami and Erie Divisions, and the lakes and reservoirs at various points in the state, but most particularly those at the summit levels of the two divisions.

The Ohio and Erie Canal, from Cleveland to Dresden, is 149 miles in length, and has 75 locks between said points. The Miami and Erie Canal, extending from Toledo to Cincinnati, is 244 miles in length, and has 95 locks between said points.

The lakes and reservoirs at the summit level of the Ohio and Erie Canal cover an area of approximately 2,200 acres, from which the water is supplied to feed the canal. Buckeye Lake furnishes water for the hydraulic which extends to Newark. The Ohio and Erie is also supplied with water from various dams in the Tuscarawas and Walhonding Rivers.

The minimum width of the Ohio and Erie Canal on the water line is 40 feet with an average depth of 4 feet. In numerous places, however, the canal is 100 feet wide and 6 and 7 feet deep. The average right-of-way is approximately 85 feet.

In addition to the above, the Ohio and Erie Canal includes the following:

From Trinway to Lockbourne, approximately 50 miles; from Carroll to Nelsonville, 40 miles; from Columbus to Portsmouth, 100 miles; from Roscoe to Six-Mile Dam, a section of the Walhonding Canal, 6 miles.

The Ohio Canal from Trinway to Lockbourne has been abandoned except that portion from Newark, through Buckeye Lake, to Lockbourne. The portion from Carroll to Nelsonville and from Columbus to Portsmouth was abandoned by act of the legislature in 1911. The

Six mile stretch from Coshocton to Roscoe is maintained for hydraulic purposes.

From Defiance to Cincinnati, the minimum width of the Miami and Erie Canal at the water line is 40 feet, with an average depth of 4 feet. From Defiance to Toledo, the minimum width at the water line is 50 feet and the depth is 5 feet. However, the latter portion of the canal is 60 to 70 feet wide on the water line a greater part of the distance, and many places more than that, and has a depth of as much as 10 feet, especially from Grand Rapids to Waterville. The section of canal from Defiance to Toledo is by far the most suitable for transportation purposes and could be improved for such purposes with less expense than any other section of the state public works. If any portion of the canal system of the state were to be developed for transportation purposes here is where it should begin, for two important cities are connected, the waterway is broad and deep and there is a possibility that within a limited number of years this section of the canal will become a part of a barge or ship canal that is being proposed between Toledo and the southern end of Lake Michigan by way of Defiance, Ohio, and Fort Wayne, Indiana, and for which the federal government has provided preliminary surveys.

The Commission suggests that if the General Assembly deems it best to improve any sections of the canal for transportation purposes on its present basis, that the sections of the Ohio and Erie, known as Summit Level, from Akron to Barberton, and of the Miami and Erie, from Toledo to Defiance, and from Dayton to Cincinnati, be set apart for navigation for a period of not less than fifteen years.

The length of the canal from Defiance to Cincinnati is 189 miles; from Defiance to Toledo, 55 miles. The average property width of the Miami and Erie is 100 feet.

The Miami and Erie Division includes, besides the main waterways, the Sidney feeder, which runs from Fort Jefferson to Lockington, a distance of 14 miles; the St. Mary's feeder, a distance of 2 miles. The reservoirs consist of the St. Mary's Reservoir, with an area of 15,000 acres, the Loramie Reservoir, with 2,400 acres, and Indian Lake, with 6,500 acres.

It is apparent from this brief statement that the holdings of the State of Ohio in its canals, lakes and reservoirs, are very extensive and valuable. The canal authorities of the state roughly estimate the value of the public works of Ohio at \$15,000,000.

PHYSICAL CONDITION.

Ohio and Erie—From Cleveland to Brecksville, a distance of 17 miles, a good head of water. From Brecksville to Lock No. 12 in the City of Akron, the canal is practically destroyed, a distance of 16 miles.

Breaks are in the canals at Peninsula and Boston and elsewhere. The spring flood was the cause of this. The Summit Level, from Lock 1 in Akron to Massillon, a distance of 21 miles, has a supply of water. From Massillon to Zoar Dam, a distance of 18 miles, there is no water. This stretch passes through Navarre and Bolivar. From Zoar Dam to Sugar Creek, a mile below Canal Dover, 11 miles in length, there is a good supply of water. From the latter point to Roscoe Aqueduct, a distance of 42 miles, no water. From Six Mile Dam to Dresden, a distance of 24 miles, a fair supply of water.

Miami and Erie—At present the Public Works Department is reconstructing a dam two miles north of Middletown following the destruction of the dam by flood, and when this is completed the Miami and Erie Canal will be in first-class condition from Middletown to Cincinnati for the purpose of supplying water. From Tadmore, the west end of Miami Aqueduct, 8 miles above Dayton, there is no water in the canal, nor has there been for a number of years. The bed of the canal is well sodded, and is an indication of what an abandoned canal would be with all the water drained from it. There is no water in the canal from Miamisburg to two miles north of Middletown, ten miles.

At the present time, in the Summit level from Loramie to Lockington, a distance of eighteen miles, there is no water, owing to two or three large breaks made by the last flood. ff ff

From Defiance to Independence Dam, a distance of 7 miles, and from Texas Lock to Providence, a distance of 4 miles, the canal is a part of the river. On this division of the canal, from Defiance to Toledo, an excellent supply of water is furnished by the dams in the Maumee River, one at Independence and the other at Grand Rapids. The canal all the way from Defiance to Toledo is well supplied with water.

Attached as Exhibit "A" to this report is a statement from John I. Miller, Superintendent of Public Works, showing in detail the physical condition and extent of the Ohio and Erie Canal and the Miami and Erie Canal, and its lakes and reservoirs.

RECEIPTS AND EXPENDITURES.

The original cost of construction of the canals has been computed at \$15,967,625.69. The total expenditure from the year 1827 to 1912, inclusive, for superintendence, repairs and cost of collection was \$13,432,568.61. Add to this \$1,309,000 for the rebuilding of locks, dredging of the canals, etc., on the Ohio and Erie and the Miami and Erie divisions, in 1906 and succeeding years, and the result is \$14,741,568.61, being the total sum expended on the canals exclusive of the original cost of construction. These figures make the total cost of the

canal system in the State of Ohio for construction, superintendence, repairs and cost of collection, \$30,709,194.30. This does not include the cost of operation for the year 1913.

The total receipts from the canals from 1827 to 1912, inclusive, have been \$17,555,160.15, leaving a balance of \$13,154,034.15 on the debit side of the account. To off-set this difference is the present value of the canal property which is owned by the state.

The total revenues collected by the department from all sources during the fiscal year 1913 were \$241,124.14, as compared with \$139,-810.20 for 1912.

Included in these totals is \$67,982.07 for land sold in 1913 and \$6,536.00 for land sold in 1912, leaving the net receipts from land rents, water and miscellaneous sources at \$173,142.07 for 1913, and \$133,305.20 for 1912. Of these revenues \$78,974.27 were paid into the General Revenue Fund of the state under the act of the General Assembly organizing the department.

For all ordinary purposes the department expended \$141,702.96 during 1913, and for extraordinary expenses paid out of canal receipts, \$56,550.00 was expended for damages occasioned by the flood. For 1912 ordinary expenses were \$146,902.28. The Legislature appropriated for salaries, expense and maintenance of the canals, \$76,600.00 in 1913, and for strengthening the walls of the state reservoirs and beautifying the state parks, \$140,700.00. For rebuilding Middletown Dam and for work on the Summit Level at Akron, \$89,120.00 was appropriated. This expenditure was also necessary on account of flood damages.

For a more detailed report as to the receipts and expenditures for the fiscal year of 1913, the Commission refers to the annual report of John I. Miller, Superintendent of Public Works, just issued.

DISPOSAL OF PROPERTY.

The location of the canal property of the state is such that the importance of its value commands serious thought before any policy with reference to its future use or disposal is adopted. The policy heretofore in vogue of selling a part of this property by piecemeal cannot be too severely criticised. The Commission believes that portions of the canal property which are sold or leased so that only sections connecting cities and towns of importance and marking division points should be disposed of, and if any portions are offered to abutting property owners, no individual section should be sold between cities or towns unless all parts are sold, the purpose being to hold intact all important sections of the canals.

The Commission believes that any lateral or other sections not

absolutely needed by the state should be leased or sold on a full value bond.

In numerous instances municipal corporations have obtained control of valuable terminals and have surrendered the same to other parties, resulting in great loss to the state. This should be carefully avoided in the future.

PRESENT USE OF CANAL.

The Commission found that no transportation of freight was being attempted on either the Ohio and Erie or the Miami and Erie divisions. Owing to the damage occasioned by the recent floods, the banks of the canals at various points were broken, allowing the water therein to escape. The most serious damage of this character was sustained by the Ohio and Erie Canal, the Miami and Erie Canal suffering considerably less. The locks on both canals are in a fair state of preservation, although a few are entirely beyond repair. It will be recalled that the State of Ohio, some years ago, spent nearly a million dollars in building new locks, and these generally are in an excellent state of preservation. Some, however, were poorly built. The Commission also observed that manufacturing industries at many points use the water of the canals and pay a rental therefor, which rental is the principal revenue received by the state. Where enough water users are not located to warrant a flow of water, the Commission believes the canal should be drained.

The lakes and reservoirs were found to be in excellent condition. The revenues arising from the operation of pleasure boats and other water craft is considerable.

The revenue accruing to the state from rentals, etc., is about sufficient at the present time to defray the cost of maintenance of these properties.

INCREASE OF INCOME.

The Commission believes that the rentals can be greatly increased on many portions of the canal system and that hydraulic power can be developed with advantage both to the state and to the communities along the canals. Great power opportunities exist along sections of the canal where there is sufficient fall. For instance, at Akron, between Lock 1 and the junction of the Little and Big Cuyahoga Rivers, there is a fall of about 200 feet in a distance of 1,000 feet and it is estimated that many hundreds of horse-power could be developed for the manufacture of electrical power that could be utilized to advantage. At Lockington, on the Miami and Erie Canal, there is a fall of 76 feet in a distance of less than one quarter of a mile, which affords another opportunity for the development of power. These are cited as instances of how the state might increase its income from the water power in its artificial waterways, and the Commission recommends that this phase of public

works development be gone into deeper by the department. The state water is also used for industrial purposes, such as steam condensing, etc., which should be developed further. The total revenue from all activities of the state's canals approach is \$180,000 annually and it is believed that by further developing the various sources of water power and water use, this can be increased in five years to \$250,000 annually.

The important fact must be always kept in mind, that industry and business have built its plants and factories favorable to their operation and if a radical change is made these matters ought to be considered. The Commission commends the hydraulic and land survey of the canals of the state that is being made by the Superintendent of Public Works upon the advice of the Governor.

The Commission finds that much waste land exists along certain sections of the canals, lakes and reservoirs, and believe that the state can with profit reclaim much of this waste land which could be made fertile and profitable.

Three legal propositions of importance have presented themselves for consideration by the Commission:

FEDERAL RIGHTS IN CANALS.

First: The rights, if any, of the United States Government in the Miami and Erie Canal lands or right-of-way. The Commission finds that the principal right-of-way of the Miami and Erie Canal from Dayton, Ohio, to Toledo, Ohio, was procured through an act of Congress, passed May 24, 1828, Vol. 8, Laws of the United States, as follows:

"Sec. 1. Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, that there be, and is hereby granted to the State of Ohio, for the purpose of aiding said state in extending the Miami Canal from Dayton to Lake Erie, by the Maumee route, a quantity of land, equal to one-half of five sections in width on each side of said canal, between Dayton and the Maumee River, at the mouth of Auglaise, so far as the same shall be located through the public land, and reserving such alternate section of the land unsold to the United States, to be selected by the Commissioners of the general land office, under the direction of the President of the United States; and which land, so reserved to the United States, for less than Two Dollars and Fifty Cents per acre. *The said land hereby granted to the State of Ohio, to be subject to the disposal of the legislature of said state, for the purpose aforesaid and no other: Provided, That said canal, when completed, shall be, and forever remain, a public highway, for the use of the government of the United States, free from any toll or other*

charge, whatever, for any property of the United States, or persons, in their service, passing through the same; And, provided also, That the extension of the said Miami canal shall be commenced within five years, and completed within twenty years, or the state shall be bound to pay the United States the amount of any lands previously sold; and that the title to purchasers, under the state shall be valid.

It will be observed that there are two provisos in said provision. The first has reference to the canal's being a public highway to be used free of any charge by the United States and the second is a limitation upon the time in which the canal must be started and completed. The right, if any, of the United States in the land over which the canal is constructed must come by virtue of the first proviso. The act does not specifically provide for a forfeiture of the land if the state fails to maintain the land as a public highway. There is a conditional clause to the second proviso that the state shall be bound to pay for the land sold if the canal shall not be completed within the time specified. This provision limits the second proviso, only, and does not limit the first. The canal has been completed and the state has complied with the second proviso.

In *People ex rel vs. The Lake Superior Chip Canal*, 32 Mich. 233, it is held:

"The right of the respondent company, under the legislation of Congress and the State Legislature in that regard, to the possession of the Portage Ship Canal, and to collect the tolls, is considered and sustained, as against the claim of the state as trustee of the United States.

The provision of the Act of Congress requiring the canal to be a public highway free of toll for United States vessels is held not to evince a purpose to create by the act a trust in the possession of the state for the United States. Similar provisions for free right of passage in United States land grants for railroads have never been construed as making the roads government roads."

The act of Congress under consideration in the above cited case contained this provision, as shown on page 236 of the report:

"And the said canal shall be and remain a public highway for the use of the Government of the United States free from toll or charge upon the vessels of said government or upon vessels employed by said government in the transportation of any property or troops of the United States."

It will be observed that the court holds in the above case that the state does not hold the canal in trust for the United States. But the court does not touch upon the rights of the United States if the canal should be abandoned.

The rule of construction of grants of this nature is stated in *Leavenworth L. & C. Railroad Company vs. United States*, 92 United States Report 733, as follows:

“The rule announced in the former decision of this court, that a grant by the United States is strictly construed against the grantee, applies as well to one granting special privileges to a private corporation.”

Rules of construction apply only where there is doubt as to the meaning of the grant or to the extent thereof.

The grant under the Act of Congress now under consideration is not doubtful. The doubt, if any, arises in the proviso.

A proviso is usually a limitation upon a grant or general provision of a statute. The proviso will not be extended beyond its plain terms. If the United States had desired to retain a right of forfeiture, it would have so stated in plain and explicit terms.

The right secured to the United States by the first proviso is a right to free tolls. It is not a condition that the state shall so maintain the canals forever as a public highway.

Forfeitures are not favored in law. Although grants from the government are construed in favor of the government, at this late date the courts would not favor a right of forfeiture under the doubtful terms of the proviso now under consideration, and which contains no specific right of forfeiture. We are of the opinion that the United States government has a right to free toll on the canals so long as they are maintained as public highways; that it has parted with all its right or interest in the land used for the canal; and that the state has an absolute title in fee to the right-of-way of the Miami and Erie Canal secured from the United States government.

RIGHTS FO DISPOSAL.

SECOND: Has the State of Ohio the right to dispose of its canal property?

The State of Ohio has the same right to dispose of this part of the canal system as it has to dispose of the part secured under the Act of 1825.

Upon this proposition we also cite decisions of the Supreme Court of Ohio, as follows:

Ohio ex rel vs. The P. C. C. & St. L Ry. C., 52 Ohio St. pp 189 et seq.:

"By force of the provision of Section 8 of the act to provide for the 'internal improvement of the State of Ohio by navigable canals,' 23 O. L. p 57, whenever the state actually occupied a parcel of land for canal purposes, a fee simple title thereto at once and by virtue alone, of such occupancy, vested in the state.

"Statutes of limitation do not run against the State unless the intention that they should run so is obvious.

"That the title of the state to its canal lands is one in fee simple, is a question of law. The only fact to be ascertained is whether the lands were, in fact, a portion of the canal system. How the acquisition was made is not material. The mere seizure and appropriation of a parcel of land for canal purposes, by force of the statute under which our canals were constructed, was alone sufficient to vest in the State a fee simple title to them. Now could any other title than one in fee simple be received by the State for lands to be devoted to a canal. A mere occupation of lands by the State for canal purposes was a seizure and appropriation of it to that purpose, and to be devoted to that purpose was to give to the state a fee simple title thereto. No conveyance was necessary; the seizure and occupancy transferred to the state the entire estate in the lands so seized and occupied, leaving to the former owner simply a claim for compensation. 23 Ohio L. 56, (Sec. 8); Malone vs. Toledo, 28 Ohio St. 643; Malone vs. Toledo, 34 Ohio St. 541."

We are of the opinion that any title to said canal lands was surrendered by the United States Government and became vested in fee in the State of Ohio at the time the state accepted the same for the reasons hereinbefore stated.

RIGHT OF ABANDONMENT.

THIRD: Upon the question of the right of the state to abandon its canals or public works, we are also of the opinion that the state, owning said properties in fee simple, has a right to do so, and upon this proposition we cite the opinion rendered in the case of *Walsh vs. The Columbus, Hocking Valley & Athens Railroad Company*, as found in United States Supreme Court Report, Vol. 176, p. 469 et seq.:

Syllabus:

"By an act of Congress passed in 1828, a large quantity of land was granted to the State of Ohio, for the construction of canals. The Act provided that such canals, 'when completed or used, shall be, and forever remain, public highways, for the use of the Government of the United States.' The grant was accepted by the State; but in 1894, the State Legislature authorized the abandon-

ment of certain canals, which had been constructed under the Act of Congress and the leasing of the same, to a railroad company.

"Held, that there was a reason to claim that the act of 1894 impaired the obligations of the previous contract between the State and the Federal Government, and that a Federal question was thereby raised.

"Held further, that in accepting the Congressional land grant of 1828, there was no undertaking on the part of the state to maintain the canals as such in perpetuity, and that the Government was only entitled to their free use as long as they were kept up as public highways, and that the act of the Legislature of Ohio authorizing their abandonment as canals and leasing them to a railway company, did no violence to the contract clause of the Constitution.

"Held further, that a private property owner was no party to the contract between the State and the Federal Government, and stood in no position to take advantage of a default of the State in respect to its contract. His rights were entirely subsidiary to those of the Government, and if the latter chose to acquiesce in the abandonment of the canals he has no right to complain."

Opinion:

"If, by the acceptance of this act of the General Assembly of the State of Ohio, the State became irrevocably bound to keep up the canals for all time, for the use, not only of the Government, but of everyone who incidentally profited by their preservation, it is impossible to escape the conclusion that their subsequent abandonment impaired the obligation of such contract. But we think the Supreme Court of Ohio was clearly right in its interpretation of the statute. The principal object of the act was a donation of land to aid the State in works of internal improvement, which were then being extensively contemplated in the new states of the West. Canals, at that time, embodied the most advanced theories upon the subject of internal transportation. Congress annexed as a condition to the grant that the canals built by its aid should 'when completed or used, be and forever remain, public highways, for the use of the Government.' Counsel for the defendant insists that, under the terms of the proviso, the obligation to maintain these canals as public highways existed only so long as they were 'used' as such, and this was evidently the opinion of the Supreme Court of Ohio. Counsel for plaintiff insists, upon the other hand, with much reason, that the proviso, that 'the said canals *when completed or used*, shall be and remain public highways,' marks the beginning of the time when the obligation was intended to operate—that is, if the canals were completed, or without being completed, were so far completed as to be capable of

use, and were *used*, the obligation to maintain them in perpetuity attached. Whatever be the proper interpretation of these words * * * the dominant idea of the proviso was evidently to compel the state to maintain the canals as *public highways*, and to allow the Government free use of them 'for any property of the United States or persons in their service passing along the same.' * * *. The object of the act was to facilitate and encourage public improvements * * * (*Waiving the question whether the state could have abandoned the land upon which these canals were built as public highways*), we think it entirely clear that Congress could not have intended to tie the State down to a particular method of using them. * * * There was no undertaking to keep the canals up for all time, and we think the proper construction of the proviso is that the Government should be entitled to the free use of the canals so long as, and no longer than, they were maintained as public highways, and that the act of 1894, leasing these lands to the defendant for an analogous purpose, does no violence to the contract clause of the Constitution."

We are, therefore, of the opinion that the State of Ohio, being the absolute owner in fee simple of its canal property, has the right, if the occasion should demand, to dispose of said lands or rights-of-way and execute a good and sufficient deed in fee simple to the purchasers thereof.

RIGHTS OF ABUTTING PROPERTY OWNERS.

FOURTH: We are of the opinion that the owners of property abutting on the canals have no incidental right therein if abandoned.

"Owners of lands abutting on a canal, incidentally benefited by the water it affords, or its facilities for drainage, have no property interest in these incidental benefits, and cannot, on such ground, enjoin abandonment of the canal, or claim compensation therefor."

See Vought vs. Columbus, Hocking Valley & Athens Railroad Company; Walsh vs. same; Vought vs. same; Walsh vs. same; Wright vs. same; Shotwell vs. same, 58 Ohio St. Report, p. 123 et seq.

RECOMMENDATIONS OF COMMISSION.

In view of the fact that the Commission is expressly enjoined in the resolution under which it acts to report upon several phases of the canal question and in view also of the experience and knowledge gained upon the trip of inspection, the Commission begs leave to report the following findings and recommendations:

FIRST: That the General Assembly request the Congress of the United States to authorize an immediate survey by capable government engineers to determine the feasibility of a waterway or waterways, either natural or artificial or both, connecting Lake Erie and the Ohio River, the depth of such waterway or waterways to be sufficient to carry boats of at least ten-foot draft. In order for a cross-state deep waterway to be sufficiently useful to warrant any great amount of expense, it ought to be large enough to convey the same units for transportation that operate on the Erie Canal in New York State, Lake Erie and the Ohio and Mississippi Rivers, thus making it unnecessary to break cargoes bound from the Atlantic coast to the Ohio Canal and Ohio and Mississippi River ports, or vice versa.

As a matter of information, it is stated here that the Federal Government, under a River and Harbor Act of August 17th, 1894, made a survey of three routes from Lake Erie to the Ohio River, one from Cleveland to Marietta via Zanesville and the Muskingum River, one from Sandusky to Portsmouth, via Columbus, and one from Toledo to Cincinnati, via Defiance and Dayton.

The government board of engineers, in what is known as the Chittenden Report, stated as a result of their surveys, that a canal seven feet in depth, with locks 21 feet by 150 feet, could be built on the Eastern route for \$12,299,372; on the Central route for \$18,094,165; and on the Western route for \$23,011,374. The report further stated that a canal ten feet deep, with locks 26 feet by 200 feet, could be built on the Eastern route for \$15,042,586; on the Central route for \$20,784,451; and on the Western route for \$26,865,126. These estimates included a right-of-way 200 feet wide, and the paving of the canal banks for a width of 12 feet on each side, for which paving an allowance ranging from \$3,400,000 to \$4,400,000 for each canal was made. It is believed that the cost of construction would be considerably increased at the present time because of the increased cost of material and labor.

The act under which the surveys were made provided for the survey of the Ohio Canal, the Miami and Erie, and such river and stream channels as might, in their judgment, be available for such proposed barge canal to be at a width of 70 feet at the water line, seven feet deep, and with a capacity for vessels of at least 280 tons. The sum of \$20,000 was appropriated by the general government to defray the expenses of the survey, and it was expressly stipulated that the government should not proceed with the construction of the barge canal. The board went somewhat outside of the strict construction of the special law under which they acted to report that a canal ten feet in depth would be feasible and practicable on any of the three routes except possibly on the Eastern route, the only question at issue there being the water supply. The report provided for new reservoirs at Port Jefferson and an improved supply for the Grand Reservoir at St. Marys for the Western route; for the

utilizing of the waters of the Scioto River in Marion County for the Central route, and a new reservoir in the Cuyahoga River near Kent, and the enlargement of the present Tuscarawas River for the Eastern Route.

The Federal Government is investigating the practicability of a barge canal from Lake Erie to the southerly end of Lake Michigan by way of the Maumee River, Defiance and Fort Wayne, and the National Waterways Commission, in its report, recommended that \$15,000 be appropriated for carrying out the survey. Such a canal would utilize the Maumee River within the State of Ohio for a considerable distance, and from Toledo to Defiance would be a part of the present Miami and Erie Canal. If the Federal Government can appropriate money for this survey, why not do the same for a barge canal from Lake Erie to the Ohio River?

A canal from Toledo to Lake Michigan would become an interstate waterway, and the Federal Government would be expected to build it in part or entirely. If in the same connection such a canal were also built from Defiance to Cincinnati, the project would be a part of a canal system with the main part from Toledo to Defiance, one arm extending south to Cincinnati from Defiance and the other, west and north-west from Defiance, making an inter-state system which the Commission believes the State of Ohio, in view of its location between great waterways, would be justified in asking the Federal Government to build wholly or in part.

The National Waterways Commission, in its report, states that the Maumee River has been inspected by Colonel Mills, Government Engineer, and found to be capable of improvement as far as Fort Wayne at reasonable cost. This canal it is proposed to have a depth of 16 feet, and to carry boats of 2,000 tons capacity, a type of barge designed to pass through the Erie Canal and safely navigate Lake Erie, as well as pass through the proposed canal.

Surveys have also been made by the United States Government for a large canal from Lake Erie to the Ohio River near Pittsburgh, which is another reason why the general government should also make a survey for an Ohio barge canal.

If the federal government should refuse to pay all or part of the cost of surveys to determine the feasibility of a barge canal, then this Commission recommends that an appropriation of Twenty-Five Thousand Dollars (\$25,000) be made by the General Assembly to enable the state to have the surveys made by competent and reputable engineers, and to ascertain by experts the commercial feasibility of such a waterway.

The improvement of inland waterways, and especially the building of canals, is receiving more attention each year throughout the entire world. The fact that such improvements are necessary is just dawning upon the people at the present time. The question to be decided in Ohio is whether a barge canal from Lake Erie to the Ohio River would justify

the expense, and this cannot be determined except by engineering authorities and experts in matters of commerce.

SECOND: The Commission finds that the rehabilitation of the canals of the state on the original basis or standard of construction to be impracticable and highly inadvisable. It must be kept in mind that the canals, as originally constructed, were of small dimensions, boats used in carrying the freight were of small proportion, the motive power was horse or mule, and that this method of freight transportation is obsolete and belongs to the past. The Commission, in arriving at this conclusion, does so largely upon the inspection of the premises and the sentiment of a majority of the people along the canals on the original standard of construction, because the expense involved to rehabilitate would be more than the benefits conferred to the state by the kind of transportation that would be carried on on such a canal. This important fact must be kept in mind, that a canal owned and operated by the state is not built for the purpose of making money for the state but it is built rather to confer advantages and relief and benefits to the citizens of the state, and if this is the return, then the investment is a wise one and all money spent would then be judiciously spent. A canal to be a factor in the shipment of freight products must be a modern canal. It must be wide enough and deep enough to admit the entrance of large boats propelled by motive power, adequate freight depots and dockage must be constructed, terminals in large cities must be built. In short, the state must attend to every detail in order that it may not only compete with the railways of the state but that it will afford every privilege to which the people are entitled.

THIRD: If a barge canal is not feasible and if it is decided that the canal system of the state shall not be rehabilitated on the original standard of construction, the Commission then finds that the canal property should be retained by the state, and that the revenue arising from rentals and other sources should be made to defray the expense of maintaining the property, and that its income can be considerably enhanced and increased by raising water rentals and charges for privileges on the lakes and reservoirs more in accordance with their real value. The Commission further finds the matter of leasing a part or all the property to private concerns for long periods to be undesirable, and that no sale of any part of the canal property necessary for canal purposes should be authorized hereafter until such time when it is clearly evident that the state cannot use its property for the good and benefit of its citizens, and not until it can be disposed of for its full real value.

FOURTH: The Commission recommends that the waterways, both natural and artificial, be developed and improved for water power and industrial purposes, wherever possible, and that the Superintendent of Public Works prepare estimates showing what the cost would be of constructing conduits where power rights can be developed. The Com-

mission further recommends that the canals be drained at such points wherever the revenue does not justify the cost of maintenance, thus preventing them from becoming nuisances to the communities through which they pass.

FIFTH: The Commission recommends that additional funds be provided to fully protect and maintain the lakes and reservoirs of the state which are a part of the canal system. These lakes and reservoirs are objects of beauty, the scenery and surroundings are pleasant, affording places of recreation for thousands of the citizens of the state, and by improving the lakes and reservoirs, strengthening the embankments and providing safe channels, the state can offer to its citizens a place of recreation equally as good and far better than is found at some of the pleasure resorts located elsewhere. By so doing the revenue of the state for the expense and maintenance of these lakes and reservoirs would be increased, they would be made self-sustaining and the health and happiness of the people promoted. The Commission especially urges that steps be taken to prevent the sale of land at its reservoirs at ridiculously low prices, as has been done in the past. The Commission further recommends that the state be empowered by the enactment of additional legislation to appropriate land for park purposes in order to extend its jurisdiction at the lakes and reservoirs.

SIXTH: The Commission recommends that the survey of state lands and the platting of all the state's property into accurate maps describing the limits of such lands and the lines or adjacent property now under progress be carried to completion as soon as possible. The Commission recommends that these property lines be fixed absolutely and permanently; that an hydraulic survey of all the sources of water controlled by the state be made, as proposed by the Superintendent of Public Works, and that a complete revision of all water-rental rates be made as contracts now in force expire.

SEVENTH: The Commission recommends the leasing of the right-of-way of any sections connecting cities to electric or steam railway companies where it can be done without jeopardizing the state's right of ownership or interfering with necessary water rights; that such leases be made for terms not to exceed twenty-five years, provided that the compensation to be paid to the state be fixed according to a basis of value commensurate with the benefits to be derived by the lessees. The offer of \$180,000 made to the State to lease 30 miles of the Hocking Canal should be considered in the same manner.

EIGHTH: The Commission is of the opinion, in view of the pending proposition to build a large canal from Toledo to Lake Michigan by way of Defiance, and the proposed investigation of the feasibility of a barge canal from Lake Erie to the Ohio River, that the proposal of the citizens of Toledo and Cleveland to divert the canal into the Maumee and Cuyahoga Rivers should be held in abeyance for the

present. The Commission offers no objection if any municipality desires to flume or conduit the canal or its feeders, at its own expense, provided the rights of the State in such property are fully protected.

NINTH: The Commission recommends that the Superintendent of Public Works investigate whether the State is receiving full compensation for the rights and privileges enjoyed by the owners of hydraulic companies; also whether the State is receiving proper returns from steam and electric railway, telegraph and telephone companies for the use of rights-of-way.

TENTH: The Commission recommends that Loramie Reservoir be created a public park subject to the same laws and regulations as other state parks.

ELEVENTH: The Commission recommends that rules and regulations relating to the control and management of all parks, lakes and reservoirs be enacted into law in order to place the full power of the state behind such rules and regulations.

TWELFTH: The Commission recommends that the Public Utilities Commission of Ohio and the Superintendent of Public Works, jointly, be empowered to appraise the state lands and waterways and fix a basis upon which an adequate rental can be made, and that such a sum be appropriated by the General Assembly in special session as will be necessary to carry out this provision.

SUMMARY.

FIRST: A survey to be made to demonstrate whether a sufficient amount of water at the summit level is available for a modern barge canal, and an investigation by experts to determine the probable volume of freight.

SECOND: The rehabilitation of the canals on the original basis or standard of construction, for navigation purposes, is impracticable and inadvisable.

THIRD: If it is found that a barge canal is not advisable and practicable, the State should retain the title to all of its property and keep the same intact for future use.

FOURTH: That the waterways of the State be developed for waterpower and industrial purposes and that an estimate be made showing cost of constructing conduits for such purposes; that the canals be drained where the revenue does not justify cost of maintenance.

FIFTH: That the lakes and reservoirs of the State be properly maintained and that legislation be enacted for their further extension and protection.

SIXTH: A survey of the state's lands in its canal property for the fixing of boundary lines and for hydraulic purposes and for a revision of water rentals.

SEVENTH: A leasing of the right-of-way of any part or parts of the canal property and the compensation therefor.

EIGHTH: The advisability of diverting the canals into rivers and the right of a municipality to flume or conduit the canal feeders.

NINTH: To ascertain whether certain companies are paying adequate rentals for use of water and rights-of-way.

TENTH: The converting of the Loramie Reservoir into a public park.

ELEVENTH: Rules and regulations relating to the control, management and operation of all state parks, lakes and reservoirs.

TWELFTH: Authorizing the Public Utilities Commission and the Superintendent of Public Works of Ohio to make an appraisal for rental purposes.

Respectfully submitted,

Wm. A. WEYGANDT,

Chairman,

E. J. HOPPLE,

JACOB J. WISE,

GUY DETRICK,

CULBERTSON J. SMITH,

JAMES R. CLARK,

Secretary.

EXHIBIT "A."

DATA ON THE PHYSICAL CONDITIONS OF THE OHIO AND ERIE CANAL.

From Cleveland to Dresden and from Dresden to Lockbourne, from Columbus to Portsmouth, from Carroll to Nelsonville.

The distances are as follows:—

- From Cleveland to Dresden, 149½ miles;
- From Trinway to Lockbourne, 50 miles;
- From Carroll to Nelsonville, 40 miles;
- From Columbus to Portsmouth, 100 miles.

The Ohio Canal from Trinway to Lockbourne has been abandoned, except a stretch extending west from Newark through Buckeye Lake to Lockbourne, which has been reserved for hydraulic purposes, a distance of about 20 miles. The stretch from Carroll to Nelsonville was abandoned by act of the Legislature in 1911. The canal from Columbus to Portsmouth was abandoned in 1911. Besides the parts enumerated above there is a section of the old Walhonding Canal which extends from Six Mile Dam to Roscoe, where it joins the Ohio Canal. This is maintained for hydraulic purposes. Its length is 6 miles.

The specifications for the Ohio and Erie Canal, as originally constructed, provided a minimum width on the water line of 40 feet and a depth of 4 feet. There are many places throughout the length of this canal which are as wide as 100 feet and 6 and 7 feet deep. The average right-of-way is approximately 5 rods.

The flood of 1913 wrought considerable damage to the Ohio and Erie Canal. At the present time water is maintained in the Ohio and Erie Canal as follows:

From Brecksville to Cleveland, a distance of 17 miles, a good head of water.

From Lock No. 12 in the City of Akron to Brecksville, the canal is practically destroyed. The distance is 16 miles. There are several breaks in the bank, especially at Peninsula and Boston. The Summit Level from Lock 1 to Massillon, a distance of 21 miles, has a supply of water.

From below Massillon to Zoar Dam, a distance of 18 miles, there is no water. This stretch passes through the towns of Navarre and Bolivar.

There is a good feed of water from Zoar Dam to Sugar Creek,

a mile below Canal Dover, a distance of 11 miles. From the latter point to Roscoe Aqueduct, a distance of 42 miles, no water. Six Mile Dam to Dresden, a distance of 24 miles, a fair supply of water.

The abandoned parts of the Ohio Canal, as above enumerated, have been surveyed and platted, with the exception of a section between Trinway and Lockbourne, which is now being completed. The Legislature in 1911 provided in the act of abandonment that the parts should be either sold or leased. The Department of Public Works has received proposals which are now under consideration for the disposal of parts of the abandoned canal south from Chillicothe for purchase, and it has received a proposal to lease a section of the Hocking Canal from Lancaster to Nelsonville, a distance of approximately 30 miles, for interurban purposes. A contract to that end has been formulated, which waits final approval, for this strip to be leased for a period of twenty-five years at a gross rental of \$180,000.

The Ohio and Erie Canal system comprises the reservoirs of the Summit Level covering an area of approximately 2,000 acres. The supply of water to the Summit Level is furnished by these locks and reservoirs. The supply at other places indicated herein where the canal has water, is supplied from the various dams in the Tuscarawas and Walhonding Rivers, except Buckeye Lake. Buckeye Lake furnishes water for the hydraulic which extends to Newark.

DATA ON THE PHYSICAL CONDITIONS OF THE MIAMI AND ERIE CANAL.

The Miami and Erie Canal extends from Toledo to Cincinnati, a distance of 244 miles. It comprises the Sidney Feeder, which runs from Port Jefferson to Lockington, a distance of 14 miles; the St. Marys Feeder, a reservoir which runs from Celina to St. Marys a distance of 11 miles. Besides the St. Marys Reservoir, this canal system has the Loramie Reservoir and Indian Lake. The Area of Lake St. Marys is about 15,000 acres, the Miami Reservoir about 2,400 acres and Indian Lake about 6,500 acres.

The specifications of the Miami and Erie Canal, as originally constructed, are as follows:

From Defiance to Cincinnati, a minimum of 40 feet to the water line and 4 feet deep, a distance of 189 miles; from Defiance to Toledo, a minimum of 50 feet on the water line and 5 feet deep, a distance of 55 miles. As a matter of fact, the latter canal is 60 to 70 feet on the water line and in many places as much as 10 feet deep, especially from Grand Rapids to Waterville.

Two sections of the above canal, from Defiance to Toledo, have

part of the canal in the river; viz; from Defiance to Independence Dam, a distance of 7 miles, and from Texas Lock to Providence, a distance of 4 miles. There is an excellent supply of water on this division of the canal which is furnished by the dams in the Maumee River, one at Independence and the other at Grand Rapids. The St. Marys Reservoir and the Loramic feed the canal from Loramie on the Summit Level to Defiance, a distance of 71 miles. At the present time the Summit Level from Loramie to Lockington has no water in it, owing to two or three large breaks made by the last flood. This is a distance of 18 miles.

The Sidney Feeder enters the Miami and Erie Canal at Lockington and supplies water from Port Jefferson Dam and is the outlet of Indian Lake Reservoir. This feeder is carrying from Lockington at the present time to Miami Aqueduct, a distance of 26 miles, and in this section last named there is a dam at Piqua and at Troy. The dam at Piqua furnishes part of the supply of water in the canal. The Troy dam does not.

From Lockington, the City of Piqua has an hydraulic running parallel to the canal for a distance of approximately 7 miles, which supplies that city with part of its water. The city has a contract with the state which has existed for many years and is renewable on the terms originally granted.

From Tadmore, or the west end of Miami Aqueduct, which is 8 miles above Dayton, there is no water in the canal. There has not been for a number of years. This is due to the fact that the Miami Aqueduct never was completed and there are two large breaks in the canal bank a mile or two below which have existed for several years, and further, the Aqueduct across the Mad River in Dayton has been out of commission for many years. The dam in the Mad River, in the upper part of Dayton, supplies the canal and what is called the Cooper Hydraulic through the City of Dayton, and as far south as Miamisburg, a distance of 20 miles.

At the present time there is no water in the canal from Miamisburg to 2 miles above Middletown, a distance of 10 miles. The water supply at Middletown into the canal comes from the state dam, located 2 miles above that town, which supplies the water from thence to the terminus in Cincinnati, a distance of 44 miles. At the present time the Department of Public Works is engaged in extensive improvement by way of extending the Middletown Dam and the building of substantial head gates and levee at that place where the former works were destroyed by the flood of 1913. When the improvements contemplated are completed that section of the canal will be in first-class condition for the supplying of water from Middletown to Cincinnati.

In 1911 the Legislature passed a measure which gave Cincinnati permission to lease the Miami and Erie Canal from its south terminus to 300 feet north of Mitchell Avenue, a distance of approximately 7 miles. The appraisement placed upon this was such that the city pays the state, at 4%, \$32,000 annual rental for the property. The last Legislature added

a section to the former grant, which when ceded to Cincinnati, will extend their grant from Mitchell Avenue to the City of Carthage, which is a stretch of canal a little over one mile long.

New Locks were built on the Miami and Erie Canal from the Toledo end to Defiance in 1906-8. Also at St. Marys and New Bremen and from Dayton south to Cincinnati a considerable amount of dredging was done, also on those parts where locks were rebuilt. The locks from Defiance to St. Marys are virtually destroyed by the ravages of time. The same thing is true of the locks from the south end of Summit Level, or Lockington, to Dayton. The stone walls are out of alignment and are growing top-heavy. The wooden gates have rotted away and have been patched, while in many instances it is hard to tell what the original material was. The feeder extending through Port Jefferson Dam, through Sidney to Lockington, needs a new aqueduct over Plum Creek and should be dredged out.

Last year and the year before the Miami and Erie Canal was dredged from Lake St. Marys almost to Delphos. The level from Grand Rapids to Maumee was dredged at the same time and dredging was done between Hamilton and Lockland. The average right-of-way from Defiance to Cincinnati is 5 rods. The average right-of-way from Defiance to Toledo, where there is canal, is almost double that.

New dams were built in the last 8 years as follows:

Grand Rapids, Middletown and Indian Lake. The dams at Port Jefferson, Piqua and Independence are made of wood and are showing signs of age, and no doubt will need rebuilding in the near future.

2

4

LIBRARY
OHIO STATE UNIVERSITY.



The Ohio State University



3 2435 00766 9187

HE3950331910

001

REPORT OF THE LEGISLATIVE CANAL COMMISSION

THE OHIO STATE UNIVERSITY BOOK DEPOSITORY



D	AISLE	SECT	SHLF	SIDE	POS	ITEM	C
8	04	34	23	8	04	017	8